

Application No. 10/750,480
Amendment dated December 16, 2005
Reply to Office Action of September 16, 2005

REMARKS

Claims 1-29 are presented for Examiner Matzek's consideration.

Claims 1, 11 and 21 have been amended to delete the words "or equal to" thereby requiring the density of the absorbent structure in the channels to be less than the density of a portion of the absorbent structure adjacent the channels. No new matter has been added.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendment and the following arguments is respectfully requested.

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ARGUMENTS

By way of the Office Action mailed September 16, 2005, claims 1 and 11 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over European Patent Number EP 0 933 074 to Sugito (*Sugito*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he elements must be arranged as required by the claim." M.P.E.P. § 2131 referencing *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990); see also *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Sugito fails to set forth each and every element, either expressly or inherently, of Applicants' claims 1 and 11 and therefore fails to anticipate Applicants' claims 1 and 11.

The Examiner, referring to *Sugito*, states that,

The channels are empty and as such possess a density less than the density of a portion of the absorbent structure adjacent the channels. (Office Action at page 2).

Applicants respectfully disagree with this reasoning. Applicants' claims 1, 11 and 21 require, in part, that,

the density of **the absorbent structure in the channels** is less than the density of a portion of the absorbent structure adjacent the channels. (emphasis added).

Sugito does not teach an absorbent structure wherein "the density of the absorbent structure in the channels is less than the density of a portion of the absorbent structure adjacent the channels" because there is no absorbent structure in the channels.

The Examiner's argument essentially reads out an element of Applicants' claims, i.e., the absorbent structure in the channels. Therefore *Sugito* fails to anticipate Applicants' claims 1 and 11 because "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131 (citing *Richardson*, 868 F.2d at 1236 (Fed.

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Cir. 1989). Applicants respectfully request that the rejection as to these claims be withdrawn.

Claims 2, 7, 12 and 21 stand rejected under § 102(b) as anticipated or, in the alternative, under § 103(a) as obvious over *Sugito*.

As discussed above, *Sugito* fails to set forth, expressly or inherently, that, "the density of the absorbent structure in the channels is less than the density of a portion of the absorbent structure adjacent the channels" as required by Applicants' claims 1, 11 and 21. Therefore, *Sugito* fails to anticipate or render obvious Applicants' claims 1, 11 and 21. Applicants' claims 2, 7 and 12 depend from either claims 1 or 11 and are patentably distinct over *Sugito* for at least the same reasons as claims 1 and 11 discussed above. Therefore, Applicants respectfully request that this rejection to claims 2, 7, 12 and 21 be withdrawn.

Claims 3-5, 8-10, 13-15 and 22-24 stand rejected under § 103(a) as being obvious over *Sugito*.

As discussed above, *Sugito* fails to set forth, expressly or inherently, that, "the density of the absorbent structure in the channels is less than the density of a portion of the absorbent structure adjacent the channels" as required by Applicants' claims 1, 11 and 21. Therefore, *Sugito* fails to anticipate or render obvious Applicants' claims 1, 11 and 21. Applicants' claims 3-5, 8-10, 13-15 and 22-24 depend from either claims 1, 11 or 21 and are patentably distinct over *Sugito* for at least the same reasons as claims 1, 11, and 21 discussed above. Therefore, Applicants respectfully request that this rejection to claims 3-5, 8-10, 13-15 and 22-24 be withdrawn.

By way of the Office Action mailed September 16, 2005, claims 1 and 6 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent Number 4,005,957 to Savich (*Savich*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Savich fails to set forth each and every element, either expressly or inherently, of Applicants' claims 1 and 6 and therefore fails to anticipate Applicants' claims 1 and 6.

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Claim 1 has been amended to require that the density of the absorbent structure in the channels is **less than** the density of a portion of the absorbent structure adjacent the channels.

The Examiner, referring to *Savich*, states,

The channels are made of the same material as the surrounding higher basis weight areas as such possess **the same density as** the surrounding higher basis weight areas. (OA at page 3, emphasis added).

Even assuming, *arguendo*, that the Examiner is correct in this assertion, *Savich* does not teach that the density of the absorbent structure in the channels is **less than** the density of a portion of the absorbent structure adjacent the channels as required by Applicants' currently amended claim 1. Therefore, *Savich* fails to teach each and every element and fails to anticipate Applicants' claim 1.

Likewise, claim 6 depends from claim 1 and is patentably distinct over *Savich* for at least the same reason as claim 1. Furthermore, claim 6 further requires binder material activated to form inter-fiber bonds within the absorbent structure. *Savich* fails to teach or suggest this element and therefore fails to anticipate claim 6 for this reason as well.

The Examiner states that,

The fibrous pads may be made of wood pulp and artificial fibers such as rayon and polyester that may act as binder fibers upon the application of heat (col. 7, lines 108). (OA at page 3).

Applicants respectfully disagree. *Savich* does not teach or suggest the use of a binder fiber. *Savich* does not teach the application of heat. Therefore, *Savich* does not teach binder material activated to form inter-fiber bonds within the absorbent structure. The Examiner's unsupported assertion as to what may occur is not sufficient.

Applicants respectfully request that the rejection as to claims 1 and 6 be withdrawn. Claims 2 and 7 stand rejected under § 102(b) as anticipated or, in the alternative, under § 103(a) as obvious over *Savich*.

As discussed above, *Savich* fails to set forth, expressly or inherently, that, "the density of the absorbent structure in the channels is less than the density of a portion of

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the absorbent structure adjacent the channels" as required by Applicants' claim 1. Therefore, *Savich* fails to anticipate or render obvious Applicants' claims 1, 11 and 21. Applicants' claims 2 and 7 depend from claim 1 and are patentably distinct over *Savich* for at least the same reasons as claim 1 discussed above. Therefore, Applicants respectfully request that this rejection to claims 2 and 7 be withdrawn.

Claims 3-5 and 8-10 stand rejected under § 103(a) as being obvious over *Savich*.

As discussed above, *Savich* fails to set forth, expressly or inherently, that, "the density of the absorbent structure in the channels is less than the density of a portion of the absorbent structure adjacent the channels" as required by Applicants' claim 1. Therefore, *Savich* fails to anticipate or render obvious Applicants' claims 1, 11 and 21. Applicants' claims 3-5 and 8-10 depend from claim 1 and are patentably distinct over *Savich* for at least the same reasons as claim 1 discussed above. Therefore, Applicants respectfully request that this rejection to claims 3-5 and 8-10 be withdrawn.

By way of the Office Action mailed September 16, 2005, claims 1-29 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 4,761,258 to Enloe (*Enloe*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143.

No *prima facie* case of obviousness has been established because the prior art references do not teach or suggest all the claim limitations.

The Examiner states,

The sheet-like grid of Figure 9 may be used to define a plurality of individual conduit cells that have areas of higher basis weights and lower basis weights. The resultant absorbent article would possess the instantly claimed channels within the absorbent core and the channels would possess the same

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density as the higher basis weight area or may have a lower density if the channels possessed no fibrous material. (OA at page 6).

Applicants respectfully disagree with this statement.

First, the sheet-like grid of Figure 9 of *Enloe* does not even come into contact with the fibrous web. The sheet-like grid of Figure 9 is a "spacing member" suitable for spacing the web forming layer 122 at an operable distance from the regulating layer 135. (col. 17: ll. 5-7, 10-13). The fibrous web 24 is formed on the forming layer 122 resulting in a structure like that illustrated in Figure 8 of *Enloe*. Therefore, the resultant absorbent article would not possess the instantly claimed channels as asserted by the Examiner. This structure does not include discontinuous absorbent zones that define at least two channels as required by Applicants' claims 1, 11 and 21. Therefore, *Enloe* does not teach or suggest all the claim limitations and no *prima facie* case of obviousness has been established.

Second, the Examiner provides no support for this hypothetical use of the sheet-like grid of *Enloe*. It appears that the Examiner is relying on impermissible hindsight to find Applicants' invention by speculatively modifying the prior art. The teaching, suggestion, or motivation for the modification and the reasonable expectation of success are not found in the prior art and cannot be based on Applicant's disclosure. M.P.E.P. §§ 2142, 2143. The fact that the reference *could* be modified does not render the resultant modification obvious unless the prior art teaches or suggests the desirability of the modification. M.P.E.P. §§ 2142, 2143. The Examiner has provided no citation in *Enloe* suggesting that "the sheet-like grid of Figure 9 may be used to define a plurality of individual conduit cells that have areas of higher basis weights and lower basis weights." Therefore, *Enloe* does not provide any reasonable expectation of success and no *prima facie* case of obviousness has been established.

Applicants' respectfully request that this rejection as to claims 1-29 be withdrawn for at least any one of the reasons discussed above.

By way of the Office Action mailed September 16, 2005, claims 6, 16-20 and 25-29 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over

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European Patent Number EP 0 933,074 to Sugito (*Sugito*) in view of U.S. Patent Number 6,407,309 to Schilkowski (*Schilkowski*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, *Sugito* fails to set forth, expressly or inherently, that, "the density of the absorbent structure in the channels is less than the density of a portion of the absorbent structure adjacent the channels" as required by Applicants' claims 1, 11 and 21. The addition of *Schilkowski* does not remedy this defect. Therefore, neither *Sugito* nor *Schilkowski*, alone or in combination, teach or suggest all the claim limitations of Applicants' claims 1, 11 and 21. Therefore, no *prima facie* case of obviousness has been established. Applicants' claims 6, 16-20 and 25-29 depend from either claims 1, 11 or 21 and are patentably distinct over the combination of *Sugito* and *Schilkowski* for at least the same reasons as claims 1, 11, and 21 discussed above. Therefore, Applicants respectfully request that this rejection to claims 6, 16-20 and 25-29 be withdrawn.

Furthermore, no *prima facie* case of obviousness has been established because there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine *Sugito* and *Schilkowski* as suggested by the Examiner.

The Examiner states that,

Since *Sugito* and *Schilkowski* are from the same field of endeavor (i.e. absorbent articles), the purpose disclosed by *Schilkowski* would have been recognized in the pertinent art of *Sugito*. (OA at page 8).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of *Sugito* with the binder fibers of *Schilkowski* motivated by the desire to prevent the "dusting" of the absorbent cellulosic fibers. (OA at page 8).

Despite these assertions, no *prima facie* case of obviousness has been established because the Examiner has provided no motivation to combine these references. The Examiner merely recites a purported benefit of *Schilkowski*, i.e., to prevent dusting, and summarily concludes that this is adequate motivation to combine *Sugito* and *Schilkowski*. The Examiner has provided no citation in either *Sugito* or *Schilkowski* to indicate that one

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skilled in the art would be motivated to modify the article of *Sugito* with the binder fibers of *Schilkowski*. The fact that the references *could* be modified does not render the resultant modification obvious unless the prior art teaches or suggests the desirability of the modification. M.P.E.P. §§ 2142, 2143. Therefore, Applicants respectfully request that this rejection to claims 6, 16-20 and 25-29 be withdrawn.

By way of the Office Action mailed September 16, 2005, claims 1-29 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-31 of copending Application No. 10/460,882 in view of *Sugito* (EP 933,074).

The present application and Application No. 10/460,882 are pending. Allowable subject matter has not been indicated in either of these applications. It is not evident which of the pending applications (or claims thereof) will become allowable first. Therefore, any action by Applicants with regard to the present rejection is premature.


For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-3016.

Respectfully submitted,

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